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No. 77-1672

In the Supreme Court of the United States

OCTOBER TERM, 1978

FIRST NATIONAL BANK OF OREGON, TRUSTEE UNDER THE WILL OF BERTHA E. CHAMBERS, FOR THE BENEFIT OF SHRINERS HOSPITALS FOR CRIPPLED CHILDREN,
PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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The question presented in this federal estate tax case is whether the Court of Claims correctly upheld the constitutionality of the last sentence of Section 2055(e)(3) of the Internal Revenue Code of 1954 (26 U.S.C., Supp. V). That sentence provides that "no interest shall be allowed for the period prior to the expiration of the 180th day after the date on which the claim for credit or refund is filed," where such credit or refund is "a result of an amendment or conformation made pursuant to * * * [Section 2055(e)(3)]." Petitioner asserts that this provision violates its Fifth Amendment right to equal protection of the laws.

The pertinent facts are as follows: Petitioner is the executor of the estate of Bertha Chambers, who died on September 29, 1973. The decedent's will established a charitable trust designating the decedent's sister and two charities as income beneficiaries, and one of these charities as residuary beneficiary. As of the date of decedent's death, the bequest to the residuary charitable beneficiary failed to qualify as an estate tax charitable deduction because the charitable trust was not a charitable remainder annuity trust, unitrust, or pooled income fund, as required by Section 2055(e)(2)(A) of the Code. The executor paid an estate tax of $583,401.40 (Pet. App. A, p. 2a).

In 1974, Congress added Section 2055(e)(3) to the Code,[1] which provided, in pertinent part, that—

> In the case of a will executed before September 21, 1974 * * * if a deduction is not allowable at the time of the decedent's death because of the failure of an interest in property which passes from the decedent to a person, or for a use, described in subsection (a), to meet the requirements of subparagraph (A) of paragraph (2) of this subsection, and if the governing instrument is amended or conformed on or before December 31, 1975, * * * so that the interest is in a trust which is a charitable remainder annuity trust, a charitable remainder unitrust (described in section 664), or a pooled income fund (described in section 642(c)(5)), a deduction shall nevertheless be allowed.

Accordingly, on December 23, 1975, petitioner obtained a judicial reformation of the will to create a nine percent charitable remainder unitrust under Sections 664 and 2055(e)(3). Petitioner and the Internal Revenue Service

[1]See Section 3(a) of the Act of October 26, 1974, 88 Stat. 1457.

thereafter agreed that as a result of the post-death amendment of the decedent's will, the value of the charitable remainder qualified as an estate tax charitable deduction under Section 2055 and that the estate was due an estate tax refund of $229,079 (Pet. App. A, pp. 2a-3a).

Petitioner claimed that the estate was entitled to interest on the refund from the date of overpayment, under Section 6611. However, the Internal Revenue Service determined that the amount of interest payable was governed by the last sentence of Section 2055(e)(3), which permits the interest payment in such cases only from the 181st day after the filing of the claim for refund (Pet. App. A, p. 3a). In this refund suit brought by petitioner in the Court of Claims, the court held that Section 2055(e)(3) applied and that the statute did not violate petitioner's right to equal protection of the laws under the Fifth and Fourteenth Amendments (Pet. App. A, pp. 4a-9a).

The Court of Claims properly rejected petitioner's constitutional challenge to Section 2055(e)(3). As the court noted, the limitation upon the payment of interest to estates was the condition upon which Congress permitted estates of decedents who had failed to rewrite their wills to conform their charitable bequests to Section 2055(e)(2)(A) and thereby become eligible for a charitable deduction. As the Court of Claims noted (Pet. App. A, p. 8a), "[t]here is nothing irrational about a law which provides remedial legislation for charitable beneficiaries, and at the same time limits the expense the Government must undergo in effectuating these benefits." Moreover, the interest limitation provision allows the Commissioner an additional period of time, without the running of interest, in which to determine whether the estate has met the requirements of Section 2055.

There are a variety of similar provisions in the Internal Revenue Code that have withstood constitutional challenges. In *Bulova Watch Co.* v. *United States*, 365 U.S. 753, this Court upheld the constitutionality of Section 3771 of the 1939 Code, which prohibited the recovery of interest on a tax refund generated by the carryback of an unused excess profits credit adjustment prior to the time that a claim for refund was filed. Likewise, Section 7(b) of the Technical Changes Act of 1949, 63 Stat. 895-896, which provided that no interest would be paid on any overpayment of tax which was refundable, because of the remedial provisions of that Act, has been sustained. *In re Cardeza's Estate*, 261 F. 2d 423 (C.A. 3).[2] See also *Hanover Bank* v. *United States*, 285 F. 2d 455 (Ct. Cl.).[3]

[2]There are other Code provisions restricting the payment of interest. For example, Section 2011(c) provides that no interest is to be paid with respect to a refund of federal estate taxes if the refund is due to a credit claimed for payment of state, estate, inheritance, legacy or succession taxes. Section 2014(e) contains a similar limitation for refunds of federal estate taxes caused by a credit for foreign death taxes paid. Section 6413(a) and (d) provides that interest may not be recovered on overpayments of taxes under the Federal Unemployment Tax Act. Sections 6416, 6420, and 6421 prohibit the recovery of interest on certain refunds of overpayment of excise taxes. Finally, Section 6611(f) and (g) limits the interest recoverable on federal income tax due a taxpayer because of certain loss, credit, or foreign tax credit carrybacks.

[3]In a case involving the identical issue, the district court in *Merchants National Bank* v. *United States*, D. N.H., Civ. Action No. 76-275, decided November 29, 1977, appeal pending, C.A. 1, Nos. 78-1043 and 78-1060, likewise rejected the taxpayer's claim, stating "[t]he provision to the extent that it sets up a separate class is reasonable and must be considered together with the special deduction which it created" (Pet. App. A, p. 9a n. 8).

As this Court stated in *United States* v. *Maryland Savings-Share Ins. Corp.*, 400 U.S. 4, 6, "[n]ormally, a legislative classification will not be set aside if any state of facts rationally justifying it is demonstrated to or perceived by the courts." See also *Village of Belle Terre* v. *Boraas*, 416 U.S. 1, 8. There is accordingly no merit to petitioner's contention (Pet. 7-9) that a statute whose purpose is not articulated in legislative history may not satisfy this test. "Legislatures are presumed to have acted constitutionally even if source materials normally resorted to for ascertaining their grounds for action are otherwise silent, and their statutory classifications will be set aside only if no grounds can be conceived to justify them" (*McDonald* v. *Board of Election*, 394 U.S. 802, 809). The procedures specified by Article I of the Constitution for the enactment of federal legislation do not include a requirement that legislative history be generated.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.,
Solicitor General.

JULY 1978.